

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 703 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

VINODCHANDRA CHIMANLAL SHAH THRO' HEIRS

Versus

ANANDLAL HIMMATLAL PARIKH THRO' HEIRS

Appearance:

MR BS PATEL for Petitioners

MR NALIN K THAKKER for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/02/99

ORAL JUDGEMENT

1. This is sub-tenant's revision under Section 29(2) of the Bombay Rent Act, 1947 (for short "the Rent Act").

2. Brief facts giving rise to this revision are as under :

The entire building owned by Adit Kom Trust was let out by its trustee Bapalal to the plaintiff respondent in the year 1959 with specific right to the tenant plaintiff to sub-let it to any person. Exercising that right the tenant in chief, viz. the plaintiff had sub-let two rooms and kitchen in this house to the defendant No.1 on monthly rent of Rs.45/-. Suit for eviction was filed against the defendant No.1 on three grounds, viz. he fell in arrears for more than six months and did not pay the arrears of rent within a month of service of notice of demand. This was in effect Suit for eviction by the tenant in chief against his sub-tenant. Another ground for eviction was that the defendant No.1, sub-tenant of the plaintiff, acquired suitable accommodation for his residence and the last ground was that he had sub-let the whole of the disputed accommodation to his brother, the defendant No.2.

3. The Suit was resisted by the defendant No.1 on the ground that he is not sub-tenant of the plaintiff rather he is tenant in chief of the trust. Allegation of sub-letting against him was also denied. It was also denied that he had acquired suitable accommodation for his residence.

4. The trial Court found that the plea of sub-letting was not established by the plaintiff. It was further found that the defendant No.1 acquired vacant accommodation suitable for his residence. On the arrears of rent the trial Court found that the defendant No.1 did not pay the rent within a month of service of notice of demand and that the rent exceeded six months when notice was served on him.

5. Feeling aggrieved the defendant No.1 preferred an Appeal. The appellate Court found that the plea of sub-letting, assignment or transfer of interest was established by the tenant in chief against his sub-tenant. It also found that the sub-tenant of the tenant in chief acquired suitable alternative

accommodation for his residence. The Appellate Court did not agree with the findings of the trial Court that the defendant No.1 was in arrears of rent exceeding six months which was not paid by him. With this modification the Appeal was dismissed. It is therefore this revision.

6. List was revised thrice, but none appeared on behalf of the revisionist. Accordingly the learned Counsel for the respondent was heard and two judgments under revision were examined so also the record.

7. The two courts below committed no illegality in returning concurrent findings that the relationship of landlord and tenant between the plaintiff and defendant No.1 was established. Even sub-tenant will be treated as tenant of the tenant in chief for the purposes of Rent Act. After considering the entire evidence on record including admission of the defendant No.1 and documentary evidence consisting of voters' list and municipal assessment register it was rightly concluded by the trial Court that the defendant No.2 is the brother of the defendant No.1 who alone is residing in the disputed accommodation and the defendant No.1 had shifted to another accommodation in Vadodara since more than a decade. The trial Court further considered that no rent note from the trust was filed in favour of defendant No.1 nor any rent receipt was filed by him showing that he was tenant of the Trust or he ever paid rent to the Trust. Kishorilal, Trustee of the said Trust did not support the defendant No.1. Counter file receipt books maintained by the Trust also did not support the defendant No.1 on the point. On the other hand the defendant No.1 admitted that he used to pay rent to the plaintiff. He never said nor proved that he paid rent to the trust or to any of the trustee. In view of the above evidence, oral as well as documentary, no manifest error of law or fact was committed by the two courts below in holding that the relationship of landlord and tenant between the parties, viz. the plaintiff and the defendant No.1 is established.

8. On the point of sub-letting the findings of the two courts below are not concurrent. The trial Court found that the plea of sub-letting by the defendant No.1 to his brother defendant No.2 was not established, but the Appellate Court did not agree with this finding. The Judgment of the trial Court shows that there was specific allegation in the plaint that the defendant No.1 has unlawfully sub-let, assigned or transferred suit premises to the defendant No.2. This is contained in para : 5 of the judgment of the trial Court which must be based on

the allegation made in the plaint. Issue No.5 is to the effect whether the defendant No.1 had sub-let or assigned or transferred Suit premises to defendant No.2 without consent of the plaintiff unlawfully. Sub-letting may not be strictly proved because two essential ingredients are to be shown and proved, viz. that the tenant in chief has transferred exclusive possession of the tenanted accommodation to the sub-tenant. The second requirement is that it should be proved that such transfer was for valuable consideration. No doubt the defendant No.2 is brother of the defendant No.1, but his mere residence in the accommodation along with the defendant No.1 initially or for a period of 10 years or more thereafter will not be enough for up-holding the plea of sub-tenancy. After the defendant No.1 shifted to the alternative accommodation in Vadodara it can be said that the defendant No.2 remained in exclusive possession of the Suit accommodation, but there is no iota of evidence that this transfer of possession was for valuable consideration. Thus, strictly speaking sub-tenancy is not established.

9. However, there are two other allegations in the plaint which are indicated from the Judgment of the trial Court and issues framed by it that the transfer of possession by the defendant No.1 to his brother defendant No.2 was transfer or assignment in any other manner as contemplated under Section 13(1)(e) of the Rent Act. It is also borne out from the evidence on record that the defendant No.2 is the real brother of the defendant No.1. On these facts Section 13(1)(e) can safely be applied for coming to the conclusion that it was a case of transfer or assignment of interest of defendant No.1 to the defendant No.2. Section 13(1)(e) of the Act is much wider. It is not confined merely to the acts of unlawful sub-letting. The words "transfer in any other manner" would include the transfer made in favour of relative or a known person, once it is proved that he has left the premises and the transferee is put in exclusive possession. To give these words a restricted meaning and equate that such transfer or sub-letting is to make that part redundant if it is found that the premises were transferred for valuable consideration then it will amount to sub-letting. If it is not possible to come to that conclusion then also it amounts to a transfer in any other manner.

10. The defendant No.2 being real brother of the defendant No.1 is proved to be in exclusive possession of the Suit accommodation for more than a decade. Thus transfer of exclusive possession is proved in his favour.

The defendant No.1 has likewise shifted to another alternative accommodation in Vadodara since more than a decade. The defendant No.2 is thus real brother of the defendant No.1 and is in exclusive possession of entire disputed possession. It is not indicated from the evidence on record that the defendant No.1 is having control over the disputed accommodation or is retaining possession of any portion thereof. Consequently it can safely be held to be transfer or assignment of whole of the disputed accommodation by the defendant No.1 to the defendant No.2 and in cases of such transfer of possession it is not required from the landlord to establish that the transfer or assignment was for valuable consideration. Similar view was taken by this Court in Harshachandra Narsibhai Patel v/s. Ibrahim Haji Khubanbhai, reported in 1984 G.L.H. 965.

11. The plaintiff, therefore, succeeded in establishing that the defendant No.1 had transferred or assigned his interest in the disputed accommodation to the defendant No.2 and this is certainly a ground for eviction of the defendant No.1. If the defendant No.1 goes away then the defendant No.2 is also bound to vacate along with defendant No.1.

12. The next ground for eviction has been that the defendant No.1 had acquired alternative suitable accommodation for his residence and has shifted to the same. The alternative accommodation is said to be in Rajvada Sheth Street, Vadodara which was acquired by the defendant No.1 about 10 years before. For establishing grounds of eviction for this reason the landlord has to establish first that the tenant has acquired alternative accommodation. The Second requirement is that such accommodation should be sufficient for the needs of the tenant. From oral and documentary evidence on record, viz. voters list and assessment register maintained by the Municipal Board Ex.80 it was concluded that the defendant No.1 is residing in the aforesaid premises in Rajvada Sheth Street, Vadodara as tenant. The appellate Court under some confusion mentioned that the defendant No.1 is owner of the said premises. The trial Court's Judgment is based on proper assessment of entries in assessment register Exh.80 where the entry is that the defendant No.1 Suresh occupies the premises in Rajvada Area Sheth Street, Vadodara, as tenant. The entry of defendant No.1 and his wife in the voters list also finds place in the same premises in Rajvada Area and not in the disputed accommodation. The defendant No.1 admitted in the witness box that he had taken other premises on rent in Sheth street Rajvada area. Admission of the party is

the best evidence against him unless it is explained that such admission was erroneous or made under some confusion. The statement was made in the witness box and there is no explanation that it was mistaken admission. Consequently the oral evidence, documentary evidence adduced by the plaintiff coupled with the admission of the defendant No.1 clinchingly establishes that the defendant No.1 acquired alternative residential accommodation for his use during subsistence of tenancy.

13. The next question for consideration is whether this accommodation is sufficient for the requirement of the defendant No.1 or not. It is not a case where the defendant No.1 has come out with pleadings that the other accommodation was acquired as additional accommodation inasmuch as the accommodation in the disputed premises was insufficient to meet the growing requirements of his family members. On the other hand it is in evidence that the defendant No.1 had completely shifted to the new alternative accommodation along with his family. The family of the defendant No.1 consists of three members and all of them have shifted to the new accommodation taken on rent. From the Municipal assessment register Ex.40 it appears that there are two rooms in the alternative accommodation situated in Sheth Street. Two rooms can be said to be sufficient for a family consisting of husband and wife and a son. Couple can accommodate in one room and the son in another room. Thus, it is cogently established that the defendant No.1 acquired suitable alternative residential accommodation for his residence. He will not suffer any hardship in case decree for eviction is passed. Consequently decree for eviction on this ground was also rightly passed by the two courts below.

14. It is not necessary to discuss non-concurrent findings of the two courts below regarding arrears of rent and its non-payment by the defendant No.1 inasmuch as nothing was addressed on this point. Moreover a decree for eviction can be passed on two grounds. It is not necessary that all the three grounds must be established by the landlord.

15. In the result there is no merit in this revision which is bound to fail. The revision is accordingly dismissed. No order as to costs.

sd/-

Date : February 22, 1999 (D. C. Srivastava, J.)

sas

